

1 Steven S. Kane, Esq., SBN: 061670
Bonnie E. Kane, Esq., SBN: 167700
2 **THE KANE LAW FIRM**
402 W. Broadway, Suite 2500
3 San Diego, CA 92101
Telephone: (619) 236-8700
4 Facsimile: (619)236-1370
E-mail: skane@thekanelawfirm.com
5 E-mail: bonnie@thekanelawfirm.com

6 Attorneys for Kimberly Stewart-Asuit, individually
And as Successor in Interest for Andrew Asuit
7

8
9 **UNITED STATES BANKRUPTCY COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 <i>In re:</i>	) Case No. 19-30088 (DM)
13 PG&E CORPORATION	) Chapter 11
14 -and-	) (Lead Case)
15 PACIFIC GAS AND ELECTRIC	) (Jointly Administered)
16 COMPANY	) MOTION PURSUANT TO FEDERAL
Debtors.	) RULE OF BANKRUPTCY PROCEDURE
<input type="checkbox"/> Affects PG&E Corporation	) 9006(b)(1) TO DEEM KIMBERLY
<input type="checkbox"/> Affects Pacific Gas & Electric	) STEWART-ASUIT AND ANDREW
<input checked="" type="checkbox"/> Affects Both Debtors	) ASUIT'S CLAIM TIMELY FILED
<i>All papers shall be filed in the Lead Case,</i>	) Date: July 26, 2022
<i>No. 19-30088 (DM)</i>	) Time: 10:00 a.m.
	) Place: To Be Held Telephonically
	) United States Bankruptcy Court
	) Courtroom 17
	) 450 Golden Gate Avenue
	) 16 th Floor
	) San Francisco, CA
	Judge: Honorable Dennis Montali

22 **Objection Deadline: July 19, 2022**

23
24 Pursuant to Rule 9006(b) of the Federal Rules of Bankruptcy Procedure,
25 Claimants Kimberly Stewart-Asuit, individually and as successor in interest for Andrew Asuit
26 move for an order expanding time to file Proof of Claim, and allow, Claim Number 108138, with
27 Prime Clerk and submitted with this motion as "Exhibit A", to be considered timely filed. This
28

1 motion is based upon the points and authorities set forth herein and concurrently Filed Notice of
2 Motion, Declaration of Kimberly Stewart-Asuit, in addition to any evidence or oral argument
3 presented at the time of hearing on this matter.

4 **I.**

5 **SUMMARY OF ARGUMENT**

6 Under the flexible standard for excusable neglect, Kimberly Stewart-Asuit and Andrew
7 Asuit's claim should be allowed.

8 Kimberly Stewart-Asuit, due to her mental state, trying to find housing and medical
9 treatment for her dying husband, was unaware of the claim process. Under the factors in the
10 United States Supreme Court case of *Pioneer Investment Services v. Brunswick Associated Ltd.*
11 *Partnership* 507 U.S. 380 (1993), the circumstances of this case clearly present excusable neglect.
12 In following *Pioneer*, the Ninth Circuit found that even when experienced counsel failed to
13 calendar an appellate deadline with no extraneous circumstances, a finding of excusable neglect
14 was proper. *Pincay v. Andrews* 389 F.3d 853, 859 (9th Cir. 2004). This case presents no
15 prejudice to the Debtors, no delay to the judicial administration of this case, and is made in good
16 faith. Rather, to deny this claim would work a severe injustice to the Claimant, which must be
17 considered. *Id.*

18 **II.**

19 **PROCEDURAL BACKGROUND**

20 On January 29, 2019, the Debtors, PG&E Corporation and Pacific Gas and Electric
21 Company ("Debtors") filed a voluntary Chapter 11 Petition. *See* Dkt. 1. On July 2, 2019, the
22 Court entered an order establishing October 21, 2019 ("the bar date") as the deadline for Fire
23 Victim claimants to file proofs of claim in this bankruptcy. *See* Dkt. 2806. That deadline was
24 extended to December 31, 2019("the "extended bar date."). *See* Dkt. 4872.

25 **III.**

26 **FACTUAL BACKGROUND**

27 Kimberly Stewart-Asuit, suffered significant losses including the loss of her home, the
28 loss of all of her personal belongings and emotional distress as a result of the Camp Fire.

1 Kimberly Stewart-Asuit,in addition to caring for her dying husband, had to find suitable housing.
2 Kimberly Stewart-Asuit was unaware of the claim process until recently.

3 IV.

4 ARGUMENT

5 The time in which to make claims in a Chapter 11 Bankruptcy may be extended by motion
6 based on excusable neglect. Federal Rules of Bankruptcy Procedure, Rule 9006(b)(1) provides:

7 (b) Enlargement.

8 (1) *In general.* Except as provided in paragraphs (2) and (3) of this subdivision,
9 when an act is required or allowed to be done at or within a specified period by
10 these rules or by a notice given thereunder or by order of court, the court for cause
11 shown may at any time in its discretion (1) with or without motion or notice order
12 the period enlarged if the request therefor is made before the expiration of the
13 period originally prescribed or as extended by a previous order or (2) **on motion
made after the expiration of the specified period permit the act to be done
where the failure to act was the result of excusable neglect.**

14 Fed R. Bank. Proc. 9006.(b)(1). *Emphasis supplied.*

15 Determination of excusable neglect has been interpreted by the United States Supreme
16 Court as an equitable consideration.

17 “We conclude the determination at bottom an equitable one, taking account of all relevant
18 circumstances surrounding the party’s omission. These include . . .the danger of prejudice
19 to the debtor, the length of the delay and its potential impact on judicial proceedings, the
20 reason for the delay, including whether it was within the reasonable control of the movant,
21 and whether the movant acted in good faith.”*Pioneer Inv. Servs v. Brunswick Assoc.*
22 *Ltd.P’ship*, 507 U.S. 380, 395 (1993)

23 Here, there is no danger of prejudice to the Debtors. Where the claim does not disrupt the
24 distribution process, no prejudice will result. *In re Sacred Heart Hosp.* 186 B.R. 891, 897.
25 (“Exactly how the debtor’s assets are distributed is ultimately of little consequence to the
26 debtor, so long as the claim is not filed so late as to disrupt the distribution process.”)

27 Further, the delay is not significant. The Trust is not even close to settling all of the
28 Claims. Allowing the late claim will not delay the proceedings.

29 The reason for the delay in filing a claim was that Kimberly Stewart was unaware of the
30 process due to finding suitable housing, taking care of her dying husband and not living in
31 California. Excusable neglect will be found even where sophisticated attorneys miss a deadline.

1 *ZILOG, Inc. v. Corning (In re ZILOG, Inc.* 450 F.3d 996, 1006). The case for excusable neglect
2 is even more compelling when the mistake was made by an unrepresented layperson. *Id.*

3 Further, Kimberly Stewart-Asuit acted in good faith. Her failure to file was not based on
4 litigation tactics where a party deliberately misses a deadline to gain advantage. *Venice Baking*
5 *Co. v. Sophast Sales & Mkg. LLC* 2016 U.S. Dist LEXIS 141533. (This factor alone weighs
6 against finding excusable neglect even when the other *Pioneer* factors are present).

7 And, finally, the likelihood of injustice is great, if this claim is not permitted. Ms.
8 Stewart-Asuit is a Camp Fire victim whose primary avenue for compensation is through this
9 bankruptcy. This is a factor which was properly considered by the Court in *Pincay, supra*, 389
10 F.3d at 859.

11 V.

12 **CONCLUSION**

13 For all of the above reasons, the motion should be granted, and Kimberly Stewart-Asuit
14 and Andrew Asuit's claim should be allowed to be deemed timely.

15 Dated: June 27, 2022

Respectfully submitted,

16 THE KANE LAW FIRM

17 By: /s/ Bonnie E. Kane

18 BONNIE E. KANE

19 Attorneys for KIMBERLY STEWART-ASUIT